SUPREME COURT

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JOHN F. DAVIS, CL

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 1313

PERTH AMBOY DRY DOCK CO.,

Petitioner.

vs.

JOHN HANSEN,

Respondent,

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NEW JERSEY

BRIEF FOR RESPONDENT IN OPPOSITION

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To the Honorable the Chief Justice of the United States, and the Associate Justices of the United States:

Respondent, JOHN HANSEN, respectfully opposes the granting of a Writ of Certiorari by this Honorable Court to the Supreme Court of the State of New Jersey on the following grounds:

This Court Lacks Jurisdiction In The Premises

Petitioner seeks to invoke the jurisdiction conferred upon this Court by 28 U. S. C. 1257(3). Said statute provides *inter alia*:

> "Final judgment or decrees rendered by the highest Court in a state in which a decision could be had may be reviewed by the Supreme Court as follows:

> (3) By Writ of Certiorari; where the validity of a treaty or statute of the United States is drawn in question or where the validity of a state statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States . . . ."

Petitioner fails to state exactly which provisions of 28 U. S. C. 1257(3) he is urging (Pb2).

Manifestly, the Judgment of the New Jersey Supreme Court does not draw in question the validity of either a treaty or statute of the United States. That Court states at (3a) ¶2:

> "It is clear that petitioner is entitled to compensation under the Longshoreman's and Harbor Workers' Act because his injury occurred on navigable waters of the United States. (Cite omitted) . . ."

Neither does said Judgment draw in question the validity of a State Statute on the ground of its being repugnant to the Constitution, treaties or laws of the United States. In its conclusion set forth at (12a) ¶3, the Court held:

> ". . . we conclude that petitioner is entitled to Workmen's Compensation under the laws of New Jersey . . ."

Where there is no decision against the validity of a treaty or statute of the United States, nor in favor of the validity of a statute of a state challenged because of its repugnance to the Constitution, treaties or laws of the United States, no writ lies. See *Coon* v. *Kennedy*, 39 S. Ct. 158, 248 U. S. 457, 63 L. Ed. 359.

Additional Reasons For Denying Writ

No conflict exists between the decisions of this Court and the Judgment of the New Jersey Supreme Court. In upholding the propriety of an award under the New Jersey Workmen's Compensation Act, the New Jersey Supreme Court concurred with the holding of this Court in *Grant Smith-Porter Ship Co.* v. *Rhode,* 257 U. S. 469, 66 L. Ed. 321 (1922) to the effect that a ship still under construction was sufficiently local to support state compensation remedies.

See (2a) ¶3 ". . . It was a new ship . . ." (5a) ¶2:

> "A traditional answer to the present case could be found by seizing on the undisputed fact that the ship here was new and in the process of completion by being painted as distinguished from a ship already in commerce which was being repaired. It is settled that where the worker injured on navigable waters was working on new ship construction, a state may validly provide its compensation remedy. (Cite omitted) . . ."

Respondent takes issue with the applicability of the cases of *Royal Indemnity Co.* v. *Pureto Rico Cement Corp.,* 142 F. 2d 237 certiorari den. 323 U. S. 756 (1944) on the ground that Federal Jurisdiction applied because of the specific provisions of the Defense Bases Act, 42 U. S. C. 1651-1654; and *Ryan Stevedoring Co.* v. *Pan Atlantic SS. Corp.,* 350 U. S. 124 (1956) which deals not with jurisdiction, but with the exclusiveness of liability.

Respondent further urges that the New Jersey Supreme Court's recognition of concurrent jurisdiction was in complete accord with this Court's decisions in *Calbeck* v. *Travellers Insurance Co.,* 370 U. S. 114; 8 L. Ed. (2d) 368 (1962) and *Avondale Marine Ways* v. *Henderson,* 346 U. S. 366.

Respondent further urges that the Judgment below was consistent with the holdings of this Court in the cases of *Baskin* v. *Industrial Accident Commission,* 338 U. S. 854, 70 S. Ct. 99, 94 L. Ed. 523 (1949) and *Bethlehem Steel Co.* v. *Moores,* 355 U. S. 874, 69 S. Ct. 233, 93 L. Ed. 417 (1948).

CONCLUSION

For the foregoing reasons the Petition for Certiorari should not be granted.

Respectfully submitted,

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